

Judge Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

TRUNG DINH PHAN,

a.k.a. Tony,

Defendant.

NO. CR10-0027RSM

GOVERNMENT'S
OPPOSITION TO MOTION
TO CONTINUE SENTENCING

Comes now the United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Susan M. Roe, Assistant United States Attorney for said District, and files this opposition to the defendant's request to continue sentencing. This defendant, the fourth and only not yet sentenced of four co-defendants before this Court, is scheduled to be sentenced on December 10, 2010.

The defendant asks that his sentencing be continued for six weeks for the convenience of attorneys from public interest law firm. The outside law firm is not a party to this case, however, it appears to have a point of view on a sentencing issue it wishes to express nationally. The law firm has a nation-wide project in which it argues its position in different districts, perhaps hoping for District and/or Circuit conflicting decisions as a springboard for subsequent appellate litigation.

1 The government believes that the Public Defender's Office from this District has
 2 many persuasive and learned attorneys who can do an excellent job of presenting this
 3 argument to the Court. If they chose, the Defenders also could incorporate the law firm's
 4 written materials in their sentencing pleadings. The substance of the anticipated materials
 5 has already been submitted to this Court, mostly recently in the Second Sentencing
 6 pleading of co-defendant Paul Douglas. This Court noted the argument at that sentencing
 7 and complimented Douglas' counsel for the presentation and its content.

8 The government endorses the high quality of our district's Public Defenders who
 9 zealously and competently are representing the defendant and his co-defendants.

10 I. LAW

11 Rule 32 of the Federal Rules of Criminal Procedure, entitled **Sentencing and**
 12 **Judgment**, sets out the parameters of the federal sentencing hearing. A court may
 13 continue a sentencing "for good cause," but generally, the court "must impose sentence
 14 without unnecessary delay." Rule 32 (b).

15 The rule, at subsection (i)(4) **Opportunity to Speak** also lists which parties have
 16 the right of allocution at sentencing. The defendant, the defendant's attorney and a
 17 government attorney (who may speak "equivalent to that of the defendant's attorney.")
 18 See, Rule 32 (i)(4)(A). Additionally, any victim of the crime who is present may be
 19 "reasonably heard." (See, Rule 32(i)(4)(B). No other party has a right to speak and no
 20 party has the right to present multiple lawyers on its behalf.

21 Even the absolute of the defendant right to allocute is not endless -- either in
 22 duration and content, *U.S. v. Mack*, 200 F3d. 653, 658 (9th Cir. 2000) *court limited*
 23 *defendant to speak as to sentence mitigation*), or in presentment, *U.S. v. Claudio*, 44. F3d
 24 10, 16 (1st. Cir. 1995), *SEC v. Monarch* 192 F.3d 295, 305 (2nd Cir. 1999); *U.S. v. Deroo*,
 25 304 F. 2d 824, 829 (8th Cir. 2002) (*no right to present witnesses or testimony at*
 26 *sentencing*).

1 **II. CONCLUSION**

2 The defendant have a right to have many lawyers or multiple law firms speak on his
3 behalf. Neither does an outside law firm have a right to speak at the defendant's
4 sentencing hearing. Moreover, what this law firm hopes to bring to the Court has already
5 been brought to the Court's attention in a co-defendant's sentencing. If defendant Phan
6 wishes to supplement the argument, he may easily do so by way of written submission.

7 Therefore, in light of the facts (1) that the Public Defenders handling this case are
8 highly competent, (2) that the issue is already before this Court, (3) that additional
9 information or argument may be submitted *timely* in writing, and (4) that the outside law
10 firm has no legal standing to present at sentencing, the government opposes the motion for
11 a continuance of defendant Phan's sentencing.

12 DATED this 9th day of November, 2010.

13
14 Respectfully submitted,

15 JENNY A. DURKAN
16 United States Attorney

17 s/ Susan M. Roe
18 SUSAN M. ROE
19 Assistant United States Attorney
20 WSBA 13000
21 United States Attorney's Office
22 700 Stewart Street, Suite 5220
23 Seattle, Washington 98101-1271
24 Telephone: 206.553.1077
25 Fax: 206.553.0755
26 Email: Susan.Roe@usdoj.gov
27
28

CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

s/Rachel Lynch
RACHEL LYNCH
Legal Assistant
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Phone: (206) 553-4214
FAX: (206) 553-0755
E-mail: rachel.lynch@usdoj.gov